

## **REMARKS**

Applicants have carefully reviewed the Final Office Action mailed December 22, 2011, and thank Examiner Eloshway for the review of the pending claims. In response to the Office Action, Applicants have amended claims 1 and 37. Claims 3-23, 25-28, 33 and 38-39 were previously cancelled. Accordingly, claims 1-2, 24, 29-32, 34-37, and 40-42 remain pending in this application. At least for the reasons set forth below, Applicants respectfully traverse the foregoing rejections.

As Applicants' remarks with respect to the Examiner's rejections are sufficient to overcome these rejections, Applicants' silence as to assertions by the Examiner in the Office Action or certain requirements that may be applicable to such rejections (e.g., whether a reference constitutes prior art, motivation to combine references, assertions as to dependent claims, etc.) is not a concession by Applicants that such assertions are accurate or such requirements have been met, and Applicants reserve the right to analyze and dispute such assertions/requirements in the future. Further, for any instances in which the Examiner took Official Notice in the Office Action, Applicants expressly do not acquiesce to the taking of Official Notice, and respectfully request that the Examiner provide an affidavit to support the Official Notice taken in the next Office Action, as required by 37 CFR 1.104(d)(2) and MPEP § 2144.03. Applicants respectfully request reconsideration of the present application in view of the above amendment, and the following remarks.

### **Claim Rejections – 35 U.S.C. § 103**

#### **I.      The Law**

"To establish prima facie obviousness of a claimed invention, all the claim recitations must be taught or suggested by the prior art." *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). M.P.E.P. § 2143.03. Accord. M.P.E.P. § 706.02(j).

#### **II.     Claims 1, 2, 24, 29, 31, 32, 34-37 and 40-42 in view of Brown & Pyun**

Claims 1, 2, 24, 29, 31, 32, 34-37 and 40-42 were rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over Brown (U.S. Pat. No. 5,779,071, hereinafter "Brown") in view of

Pyun (U.S. 2004/0089626, hereinafter “Pyun”). Claim 30 was rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over Brown in view of Pyun, and further in view of Webb et al. (U.S. 7,204,380, hereinafter “Webb”). Applicants respectfully traverse the rejection.

#### A. Claims 1 and 37

Claim 1, as amended, is directed to a vent system for a drinking container including a single closure member for coupling to a drinking container. The closure member has an air passage therethrough and a one-way valve coupled to the closure member and operatively connected to the air passage to allow the passage to allow the passage of air from outside the container into the container when a vacuum is formed inside the container. Claim 1 requires that that the valve permit passage of air from outside the container into the container, *only when a vacuum is formed inside* the container. This arrangement prevents outflow of liquid from the container through the vent system through the air inlet. Support for this amendment may be found on at least page 4, lines 12-15, pg. 5, lines 4-6 and 18-20, page 20, lines 15-16 and page 21, lines 9-11 of the application as originally filed.

Claim 37 is directed to a method of forming a drinking container. The claimed method requires mounting on the drinking container, a single piece closure member. The closure member includes an passage threrethrough to allow the passage of air from outside the container to an interior of the container. In the closure member, at least on air vent tube is formed. A one-way valve is coupled to the closure member and is operatively connected to an air passage. While of a different scope than that of claim 1, claim 37 also includes the limitation that the valve permits passage of air from outside the container into the container, *only when a vacuum is formed inside* the container. At least the limitation of a valve that is configured to permit passage of air from the outside of the container into the container only when a vacuum is formed inside the container is not taught, disclosed or suggested by the cited references.

Brown teaches a vent unit having a vent insert that abuts between a reservoir tube and a nipple. A vent unit airway extends between the outside of the bottle and a point in the reservoir tube above the level of the liquid trapped inside the vent tube when the bottle is inverted. The

object of Brown was to provide a nursing bottle which prevents formation of any vacuum inside the bottle during nursing, yet resists spills. Brown solves the spill problem in a different way from the arrangement and method recited in claims 1 and 37, respectively.

More specifically, Brown provides a reservoir tube which collects the liquid in the reservoir tube when the bottle is inverted, thereby allowing a continuous free air flow at all times through the vent unit airway. Contrary to claims 1 and 37, Brown does not require vacuum for air to flow into the bottle. Indeed, Brown states that the reservoir tube is sufficient to prevent spills/leakage when the bottle is properly. However, as one of ordinary skill in the art can appreciate, if the bottle is shaken or is filled *above* a certain volume, the Brown bottle also leaks, as liquid enters the opening 632 in the vent tube and flows back out through the vent airway.

As acknowledged by the Examiner, Brow does not teach a valve at al. Indeed, Brown teaches away from the use of a valve because Brown specifically provides for a “continuous air path” through the bottle (Col. 3, line 61 – Col. 4, line 4) and *prevents* formation of a partial vacuum without the use of gaskets (seals) (Col. 2, lines 9-10). Thus, Brown expressly teaches that there is no obstruction of the air flow at any time.

Contrary to Brown, claims 1 and 37 provide for no passage of liquid into the air passage when the valve is closed. Indeed, the valve in claims 1 and 37 *eliminates* the need for a reservoir, which is expressly required by Brown. Moreover, and also unlike Brown, claims 1 and 37 only provide for an air path when there is vacuum in the container, which causes the valve to open. When there is no vacuum, the valve closes and stops air from flowing in, while preventing leakage through the air inlet passage even under shaking, falling or over filling conditions.

Moreover, when the baby bottle of Brown is assembled and the reservoir tube is inserted into the liquid in the bottle, some of the liquid rises up into the lower, open portion of the reservoir tube while air from the tube flows up and out of the air passage, as one of ordinary skill in the art can appreciate. When the bottle is turned upside down for drinking, this liquid in the open portion of the reservoir tube flows into the portion of the reservoir tube adjacent the top of the bottle, which

is of larger volume than the open portion, so that it will not flow out through the hole (opening 632) in the vent tube.

Contrary to Brown, no reservoir is provided or required in the arrangements defined by claims 1 and 37. The claimed one-way valve is sufficient to prevent liquid from entering the air passage. The anti-bubble tube recited in the dependent claims was improperly equated with the reservoir of Brown. But more importantly, the anti-bubble tube is an optional element, unlike the reservoir tube that is necessary in Brown.

Moreover, even when used, the anti-bubble tube is not a reservoir. It is wider on the upper portion in order to contain the valve. Further, the anti-bubble tube serves to transfer the air through the liquid to the bottom portion of the container when inverted, and create a “driving bell effect” due to the closed valve. Indeed, the anti-bubble tube works in an opposite fashion from Brown – when the insert with the tube is inserted into the bottle, the valve seals the air passage at the top so no air escapes from the anti-bubble tube. Therefore, no liquid can enter the anti-bubble tube, which is already full of air, thereby providing the “driving bell effect,” which cannot be created in Brown.

Pyun does not make up for the deficiencies of Brown. The Office Action makes reference to FIG. 25 as illustrating a single, one-way valve. However, in this embodiment of Pyrun, no insert is disclosed. Because there is no insert to permit outflow of liquid while air flow in, a vent unit, including the valve is formed in the bottom of the teat, near the edge, to permit the desired inflow of air during drinking of liquid from the bottle.

Combining the valve on the teat as taught by Pyun with the insert of Brown would be physically impossible. More importantly, however, is that Brown expressly teaches away from using a valve in any location. Adding a valve to the insert of Brown would prevent the free flow of air and create vacuum in the bottle. The insert of Brown is specifically designed to provide a continuous flow of air to prevent the formation of vacuum and require no suction or exertion by a baby to drink. *See, inter alia*, Col. 1, lines 1-17 and 33-44; Col. 2, lines 7-9 and 25-29. The focus of Brown was to eliminate the use of a valve, and instead use a reservoir tube to provide free flow of air and to prevent the creation of vacuum which can hurt the baby’s ears and cause colic. However,

as explained above, this arrangement is susceptible to leakage, and limits the amount of liquid that can be filled in the bottle.

To address the problems set forth in this application, claims 1 and 37 define arrangements whereby a one-way valve is in a particular location – and operatively connected to the air passage. More specifically, claims 1 and 37 both expressly teach a single uni-directional valve mounted on the closure member that, in an open position, allows air to enter the drinking container and, in a closed position, prevents liquid flowing out of the container through the air inlet. These arrangements are not taught, suggested or disclosed in either Brown or Pyun or their combination. Accordingly, independent claims 1 and 37 are patentable over Brown and Pyun, both individually and in combination. Withdrawal of the rejection is therefore respectfully requested.

**B. Dependent claims 2, 24, 29, 31-32 and 34-36 and 40-42**

Dependent claims 2, 24, 29, 31-32, 34-36 and 40-42 are all dependent upon either claim 1 or claim 37. Accordingly, these claims are patentable merely by virtue of their dependency upon an allowable base claim. However, these claims also contain additional subject matter that is separately patentable. For example, claim 2 recites that the valve includes a circular opening adapted and configured to receive a connecting element of the closure member. This limitation is not taught, suggested or disclosed in the cited combination. Accordingly, Applicant respectfully requests that the rejection of these claims be withdrawn.

**C. Dependent claim 30**

Dependent claim 30 was rejected as being unpatentable over Brown in view of Pyun and further in view of Webb. The discussion concerning the rejection of claim 1 above, and more specifically, the failure of Brown and Pyun to obviate claim 1, is equally applicable here.

Moreover, Webb does not make up for the deficiencies of Brown and Pyun. Webb describes an infant cup having a flexible mouthpiece and a valve element having a complementary shape. According to Webb, the *cup body* can be made of a heat sensor material.

In contrast to Webb, claim 30 recites that the anti-bubble tube comprise a “heat sensor of a thermally reactive material to indicate a temperature of a liquid in the container.” Webb does not even teach an anti-bubble tube. Accordingly, as Brown, Pyun and Webb all fail to teach an anti-bubble tube that comprises a heat sensor as set forth in claim 30, Applicant respectfully requests that the rejection be withdrawn.

### **CONCLUSION**

In view of the above remarks, the pending application is in condition for allowance. If, however, there are any outstanding issues that can be resolved by telephone conference, the Examiner is earnestly encouraged to telephone the undersigned representative.

Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 18-0013, under Order No. 66599-0012 from which the undersigned is authorized to draw. To the extent necessary, a petition for extension of time under 37 C.F.R. §1.136 is hereby made, the fee for which should also be charged to this Deposit Account.

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Respectfully submitted,

Electronic signature: /Kristin L. Murphy/  
Kristin L. Murphy  
Registration No.: 41,212  
RADER, FISHMAN & GRAUER PLLC  
Correspondence Customer Number: 10291  
Attorney for Applicant